

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2008-0731-MLM-E   **TCEQ ID:** RN101499515   **CASE NO.:** 35829  
**RESPONDENT NAME:** PAC-N-SAC STORES, INC. dba Pac N Sac 104

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input checked="" type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input checked="" type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input checked="" type="checkbox"/> <b>EDWARDS AQUIFER</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Pac N Sac 104, 2100 Ranch Road 12, San Marcos, Hays County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b>   <input checked="" type="checkbox"/> <b>Yes</b>   <input type="checkbox"/> <b>No</b></p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 25, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>     <b>TCEQ Attorney/SEP Coordinator:</b> None     <b>TCEQ Enforcement Coordinator:</b> Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577;     Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171     <b>Respondent:</b> Mr. Bernie Bowden, President/Owner, PAC-N-SAC STORES, INC., 1503 Post Road, San Marcos, Texas 78666     <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> February 20, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 21, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2) Failure to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].</p> <p>3) Failure to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p><b>WATER</b></p> <p>4) Failure to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages [30 TEX. ADMIN. CODE § 213.5(d)(1)].</p>	<p><b>Total Assessed:</b> \$8,701</p> <p><b>Total Deferred:</b> \$1,740  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$6,961</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Began conducting bimonthly inspection of the rectifier and other components of the cathodic protection system on April 18, 2008; and</p> <p>b. Conducted the required triennial testing of cathodic protection system on March 27, 2008.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Install and implement a release detection method for all USTs at the Facility; and</p> <p>ii. Install and implement a continuous monitoring leak detection system.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. and a.ii.</p>

Additional ID No(s): 18195



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

<b>DATES</b>	<b>Assigned</b>	29-Apr-2008	<b>Screening</b>	30-Apr-2008	<b>EPA Due</b>	
	<b>PCW</b>	30-Apr-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	PAC-N-SAC STORES, INC. dba Pac N Sac 104
<b>Reg. Ent. Ref. No.</b>	RN101499515
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35829	<b>No. of Violations</b>	3
<b>Docket No.</b>	2008-0731-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Rajesh Acharya
<b>Multi-Media</b>	Edwards Aquifer	<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$7,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment due to compliance history.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **0.0%** Reduction **Subtotal 5** **\$0**

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

**0.0%** Enhancement\* **Subtotal 6** **\$0**  
 \*Capped at the Total EB \$ Amount  
 Total EB Amounts \$2,139  
 Approx. Cost of Compliance \$17,600

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$7,500**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **16.0%** **Adjustment** **\$1,201**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 2.

**Final Penalty Amount** **\$8,701**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$8,701**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$1,740**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$6,961**

Screening Date 30-Apr-2008

Docket No. 2008-0731-MLM-E

PCW

Respondent PAC-N-SAC STORES, INC. dba Pac N Sac 104

Policy Revision 2 (September 2002)

Case ID No. 35829

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101499515

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 30-Apr-2008 <b>Respondent</b> PAC-N-SAC STORES, INC. dba Pac N Sac 104 <b>Case ID No.</b> 35829 <b>Reg. Ent. Reference No.</b> RN101499515 <b>Media [Statute]</b> Petroleum Storage Tank <b>Enf. Coordinator</b> Rajesh Acharya <b>Violation Number</b> 1 <b>Rule Cite(s)</b> 30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1) <b>Violation Description</b> Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).	<b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision April 29, 2008</i>																				
<b>Base Penalty</b> \$10,000																					
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																					
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> <th style="width: 30%;"></th> </tr> </thead> <tbody> <tr> <td><b>Release</b></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td></td> <td></td> <td><b>Percent</b> 25%</td> </tr> </tbody> </table>		Major	Moderate	Minor		<b>Release</b>					Actual					Potential	x			<b>Percent</b> 25%
	Major	Moderate	Minor																		
<b>Release</b>																					
Actual																					
Potential	x			<b>Percent</b> 25%																	
<b>&gt;&gt; Programmatic Matrix</b>																					
<b>Matrix Notes</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Falsification</th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> <th style="width: 30%;"></th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td><b>Percent</b> 0%</td> </tr> </tbody> </table> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">           Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.         </div>	Falsification	Major	Moderate	Minor						<b>Percent</b> 0%										
Falsification	Major	Moderate	Minor																		
				<b>Percent</b> 0%																	
<b>Adjustment</b> \$7,500																					
<b>\$2,500</b>																					
<b>Violation Events</b>																					
<table style="width: 100%;"> <tr> <td style="width: 40%;">Number of Violation Events</td> <td style="width: 10%; text-align: center;">1</td> <td style="width: 10%; text-align: center;">70</td> <td style="width: 40%;">Number of violation days</td> </tr> </table>		Number of Violation Events	1	70	Number of violation days																
Number of Violation Events	1	70	Number of violation days																		
<b>mark only one with an x</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>daily</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td style="text-align: center;">x</td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </tbody> </table>	daily		monthly		quarterly	x	semiannual		annual		single event									
daily																					
monthly																					
quarterly	x																				
semiannual																					
annual																					
single event																					
<b>Violation Base Penalty</b> \$2,500																					
<div style="border: 1px solid black; padding: 5px; margin-top: 5px;">         One quarterly event is recommended based on documentation of the violation during the February 20, 2008 investigation to the April 30, 2008 screening date.       </div>																					
<b>Economic Benefit (EB) for this violation</b>																					
<table style="width: 100%;"> <tr> <td style="width: 50%;">Estimated EB Amount</td> <td style="width: 50%; text-align: right;">\$62</td> </tr> </table>		Estimated EB Amount	\$62																		
Estimated EB Amount	\$62																				
<b>Statutory Limit Test</b>																					
<table style="width: 100%;"> <tr> <td style="width: 50%;">Violation Final Penalty Total</td> <td style="width: 50%; text-align: right;">\$2,900</td> </tr> </table>		Violation Final Penalty Total	\$2,900																		
Violation Final Penalty Total	\$2,900																				
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$2,900																					

**Economic Benefit Worksheet****Respondent** PAC-N-SAC STORES, INC. dba Pac N Sac 104**Case ID No.** 35829**Reg. Ent. Reference No.** RN101499515**Media** Petroleum Storage Tank**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	20-Feb-2008	20-Dec-2008	0.83	\$62	n/a	\$62

**Notes for DELAYED costs**

Estimated cost to provide release detection for the USTs. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$62

Screening Date 30-Apr-2008

Docket No. 2008-0731-MLM-E

PCW

Respondent PAC-N-SAC STORES, INC. dba Pac N Sac 104

Policy Revision 2 (September 2002)

Case ID No. 35829

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101499515

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(2)(C), 334.49(c)(4) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Also, failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the February 20, 2008 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1,202

Violation Final Penalty Total \$2,900

This violation Final Assessed Penalty (adjusted for limits) \$2,900

**Economic Benefit Worksheet****Respondent** PAC-N-SAC STORES, INC. dba Pac N Sac 104**Case ID No.** 35829**Reg. Ent. Reference No.** RN101499515**Media** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	20-Feb-2008	18-Apr-2008	0.16	\$1	n/a	\$1

**Notes for DELAYED costs**

Estimated cost to inspect the rectifier and other components of the cathodic protection system. Date Required is the investigation date. Final Date is the compliance date.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	20-Feb-2005	27-Mar-2008	4.02	\$201	\$1,000	\$1,201
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Avoided cost for completing the triennial test. Date Required is three years prior to the investigation date. Final Date is the compliance date.

**Approx. Cost of Compliance****\$1,100****TOTAL****\$1,202**



Screening Date 30-Apr-2008

Docket No. 2008-0731-MLM-E

PCW

Respondent PAC-N-SAC STORES, INC. dba Pac N Sac 104

Policy Revision 2 (September 2002)

Case ID No. 35829

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101499515

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 213.5(d)(1)

Violation Description

Failed to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

70 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the February 20, 2008 investigation to the April 30, 2008 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$875

Violation Final Penalty Total \$2,900

This violation Final Assessed Penalty (adjusted for limits) \$2,900

**Economic Benefit Worksheet****Respondent** PAC-N-SAC STORES, INC. dba Pac N Sac 104**Case ID No.** 35829**Reg. Ent. Reference No.** RN101499515**Media** Petroleum Storage Tank**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment	\$15,000	20-Feb-2008	20-Dec-2008	0.83	\$42	\$833	\$875
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install continuous monitoring leak detection system. Date Required is the date of investigation.  
Final Date is the estimated date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$15,000

TOTAL

\$875

# Compliance History

Customer/Respondent/Owner-Operator:	CN600782882	PAC-N-SAC STORES, INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101499515	PAC N SAC 104	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	18195	
Location:	2100 RANCH ROAD 12, SAN MARCOS, TX, 78666	Rating Date: 9/1/2007	Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	May 01, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 01, 2003 to May 01, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rajesh Acharya Phone: (512) 239-0577

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 04/21/2008 (636273)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PAC-N-SAC STORES, INC. DBA PAC  
N SAC 104  
RN101499515**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-0731-MLM-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding PAC-N-SAC STORES, INC. dba Pac N Sac 104 ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 2100 Ranch Road 12 in San Marcos, Hays County, Texas (the "Facility").
2. The Respondent's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 26, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Eight Thousand Seven Hundred One Dollars (\$8,701) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Thousand Nine Hundred Sixty-One Dollars (\$6,961) of the administrative penalty and One Thousand Seven Hundred Forty Dollars (\$1,740) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. Began conducting bimonthly inspection of the rectifier and other components of the cathodic protection system on April 18, 2008; and
  - b. Conducted the required triennial testing of cathodic protection system on March 27, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 20, 2008.
2. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of 30





TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on February 20, 2008.

3. Failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on February 20, 2008.
4. Failed to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages, in violation of 30 TEX. ADMIN. CODE § 213.5(d)(1), as documented during an investigation conducted on February 20, 2008.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: PAC-N-SAC STORES, INC. dba Pac N Sac 104, Docket No. 2008-0731-MLM-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Install and implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
    - ii. Install and implement a continuous monitoring leak detection system, in accordance with 30 TEX. ADMIN. CODE § 213.5.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:



"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.



7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

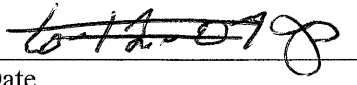


## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

8/29/2008  
  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

6-12-08  
Date

BERNIE BOWDEN  
Name (Printed or typed)  
Authorized Representative of  
PAC-N-SAC STORES, INC. dba Pac N Sac 104

OWNER  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

